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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JACOB R., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB R.,

Defendant and Appellant.

G035196

(Super. Ct. No. DL018337)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Joy
Wiesenfeld Markman, Judge. Affirmed.

Stephen S. Buckley, Christian C. Buckley, Buckley & Buckley, under
appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Raquel M. Gonzalez and
Angela M. Borzachillo, Deputy Attorneys General, for Plaintiff and Respondent.

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Sixteen-year-old Jacob R. appeals from the juvenile court order making him a ward after the court found he committed the following violations of the law: two counts of assault with a firearm (Pen. Code, § 245, subd. (a)(2)),¹ one count each of attempted murder (§§ 187, subd. (a), 664), street terrorism (§ 186.22, subd. (a)), carrying a loaded firearm while a gang member (§ 12031, subds. (a)(2) & (c)), and carrying a concealed weapon while a gang member (§ 12025, subds. (a)(2) & (b)(3)). These offenses were enhanced with special allegations that he personally used a firearm (§ 12022.5, subd. (a)), participated in criminal activity to benefit a gang (§ 186.22, subd. (b)(1)(A)), and personally discharged a firearm (§ 12022.53, subd. (c)). Jacob was sent to the California Youth Authority (CYA) with a maximum confinement period of 42 years, 4 months.

On appeal, Jacob contends the juvenile court erred when it denied his motion for acquittal at the end of the prosecution's case due to insufficiency of evidence. He also characterizes the prosecution's failure to produce the gun as prosecutorial misconduct, denying him due process of law. Finally, he contends the court erred in admitting the testimony of the prosecution's expert on gang behavior because that witness relied on allegedly hearsay statements to formulate his opinion. We affirm the juvenile court order.

FACTS

Townsend Street was the name of a criminal street gang in which Jacob was a member, along with his brother Edward, Victor B. and Ulises R.—holding nicknames of “Wacko,” “Spooky” and “Sleepy,” respectively. Jacob formerly had a girlfriend by the name of Anabel who had decided to switch her affections from him to Ruben B. Jacob corralled his gang buddies, Spooky and Sleepy, to assist him in

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All further section references are to the Penal Code unless otherwise stated.

expressing his disagreement with this new arrangement. En route to Ruben's home, Sleepy handed Jacob a .38 caliber revolver to use to drive the point home.

Upon their arrival, Jacob yelled Anabel's name, getting Ruben and his brother Miguel's attention. As the two young men opened the door, Jacob yelled at Ruben about Anabel, and when Ruben confirmed that she was his "lady," Jacob challenged him with "Come out, dog!" Ruben and Miguel emerged from the doorway, and Jacob pulled out the gun and smashed Ruben in the face with it. Miguel started to intervene but Ruben stopped him. Jacob and his cohorts ran down the street, but not before Jacob turned, aimed at Miguel and fired two shots. Miguel heard the bullets whiz past him and also heard them strike a truck behind which he ducked.

Spooky and Sleepy retrieved the gun from Jacob and attempted to get rid of it. However, their idea was to throw it in a trashcan in an apartment courtyard which just happened to be where Santa Ana Police Officer Rudy Reynoso was patrolling. He saw them hovering over a trashcan and then heard a loud metallic "clunk." Investigating, he discovered a .38 caliber revolver. It was loaded with three rounds of ammunition in its five cylinders. Spooky and Sleepy were finally cornered in the apartment of another Townsend Street gang member, who lived in the first apartment of that building. They eventually saw the error in their gang ways: After they pleaded guilty, they were granted use immunity in exchange for their testimony of the above facts, naming Jacob as the person who fired the gun.

Santa Ana Police Officer Daniel Park searched Jacob's room and found numerous items indicating Jacob's association and participation in the Townsend Street gang. For instance, there were papers and photographs with the following tags on clothes, pictures and letters: CTR, Lil Wacko Yacko, CT, CTRx3.

Santa Ana Police Department Investigator Mauricio Estrada testified as an expert in the subject of gang values, customs and behavior. He testified that, in his expert opinion, Townsend Street was a criminal street gang and Jacob was a member of that

gang. He concluded that the shooting was actually to benefit that street gang, as it was done to enhance the respect that others—namely, the B. brothers and anyone who heard about the shooting—would hold for Townsend Street gang members. He emphasized that a gang’s concept of respect was the most significant aspect of a gang member’s life. In this particular gang, respect was defined as fear of their gang held by the community and rival gangs. Gang members were required to “back up” their fellow gang members in any endeavor prompted to enhance, protect or expand that respect.

Per Estrada, Townsend Street Gang was a territorial criminal street gang formed in 1969, and which had as their symbols, “CT,” which stood for Calle Townsend. Variations on that symbol included CTR (Calle Townsend Rules), OC (Orange County), RIFA (rules or controls), SA (Santa Ana), Sureno (southern as opposed to a northern gang), x3 (Mexican Mafia prison gang as connected with Townsend Street). Jacob had OC tattooed on his leg, had a hat with CT on it, and had admitted in previous police contacts that he hung out with Townsend Street gang members, especially his brother whose gang moniker was “Wacko.”

DISCUSSION

Motion for Acquittal

Jacob raised a motion to dismiss the attempted murder count at the end of the prosecution’s case, contending the evidence was insufficient to sustain a conviction. (See Welf. & Inst. Code, § 701.1.) He argued that he was merely firing as he ran and therefore the record was empty of any evidence he intended any injury by firing the gun. The record belies this allegation: Miguel testified Jacob aimed the gun at him *and* he heard the bullets striking the truck behind which he ducked. As Jacob concedes, there was no evidence *other than* Miguel’s testimony, which is quite sufficient to establish the point, particularly in light of the court’s stated acceptance of Miguel’s credibility and that his testimony was undisputed. Substantial evidence supports each of the elements of the crime of attempted murder (see *People v. Lashley* (1991) 1 Cal.App.4th 938, 945-946),

and that is the standard for review of a denial of a motion to dismiss under Welfare and Institutions Code section 701.1 which we must use. (See *In re Man J.* (1983) 149 Cal.App.3d 475, 482 [“the standard for review of the juvenile court’s denial of a motion to dismiss is whether there is substantial evidence to support the offense charged”].) Jacob may not have liked Miguel’s testimony, but it was sufficient both for the court to deny the dismissal motion and for us to sustain that ruling.

Use of the Photograph in Place of the Gun

Jacob disputes the prosecution’s use of a photograph in place of the gun at the hearing, contending it was prosecutorial misconduct to make that substitution. However, he fails to provide any authority for this rather novel objection, relying on general principles of the right under section 1054.1, subdivision (c) to be informed of all “relevant real evidence seized or obtained as a part of the investigation” He extrapolates from this general procedural right that a photograph substituted for the item represented in it somehow constitutes *concealment* of such evidence. We do not draw the same conclusion. Moreover, parties are not required to *introduce into evidence* all objects, documents or testimony. (See CALJIC No. 2.11 [“Neither side is required to call as witnesses all persons who may have been present Neither side is required to produce all objects or documents mentioned or suggested by the evidence.”].)

Expert Testimony

Jacob attacks Estrada’s testimony because Estrada relied on hearsay statements made on other occasions by many other individuals in order to formulate his expert opinion regarding gang culture. Evidence Code sections 801-802 permit exactly that. (See *People v. Gardeley* (1996) 14 Cal.4th 605, 618.) Contrary to Jacob’s characterization, such opinions do not violate the principles of *Crawford v. Washington* (2004) 541 U.S. 36. A gang expert can properly testify as to a defendant’s gang membership based on a myriad of factors because “*Crawford* does not undermine the established rule that experts can testify to their opinions on relevant matters, and relate

the information and sources upon which they rely in forming those opinions. This is so because an expert is subject to cross-examination about his or her opinions and additionally, the materials on which the expert bases his or her opinion are not elicited for the truth of their contents; they are examined to assess the weight of the expert's opinion. *Crawford* itself states that the [C]onfrontation [C]lause 'does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.' [Citations.]" (*People v. Thomas* (2005) 130 Cal.App.4th 1202, 1210; see also *People v. Gardeley, supra*, 14 Cal.4th 619-620.) The same rule already has been set for the federal rules regarding evidence. (See *Delaware v. Fensterer* (1985) 474 U.S. 15, 16-19.) The two cases upon which Jacob relies are quite distinguishable: Neither case dealt with expert testimony which drew upon hearsay information as resource material for the expert conclusion. Both dealt with evidence which *directly* incriminated the accused. (See *People v. Price* (2004) 120 Cal.App.4th 224, 237-239; *People v. Sisavath* (2004) 118 Cal.App.4th 1396, 1402-1403.)

The juvenile court order is affirmed.

SILLS, P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.